IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1211 OF 2004

IN

APPEAL FROM ORDER NO.286 OF 2002

Mohammed Mustafa ...Applicant

Vs.

Smt.Mariam Nisha ...Respondent

Mr.Arshad Haindaday for the Applicant
Mr.Kiran Jain for the Respondent.

CORAL: A.S.OKA, J.

DATED: JANUARY 10, 2005.

P.C.:

1. By order dated 2nd April 2002 this Court disposed of the Appeal from Order finally. This Court directed that the dispute between the parties be referred to the sole Arbitrator.

2. This Application is filed by the Respondent in the Appeal. The prayer (a) in the Application read thus :

"(a) that the necessary orders and directions be given to the Ld. Arbitrator to delete the portion of the examination in chief of Plaintiff's C.A. which is beyond pleading and scope of the suit and the Plaintiff's C.A. deposition in paras 2

to 6,8,9,16 and 17 be disallowed;"

3. From the aforesaid prayer and the averments in the Civil Application it appears that the challenge in the Civil Application is to the certain order passed by the learned Arbitrator in the pending arbitral proceeding.

4. In my view Civil application is not maintainable in Appeal from Order which has been finally disposed of. On this ground alone, the Civil Application deserves to be rejected and the same is hereby rejected with no order as to costs.

5. It is made clear that no adjudication is made by this Court on merits of the controversy raised in the Application.

6. Parties to act upon an authenticated copy of this order.

Judge.